

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



L-1

FILE:



Office: NEW YORK CITY

Date:

**JUL 23 2009**

MSC 06 097 11771

IN RE:

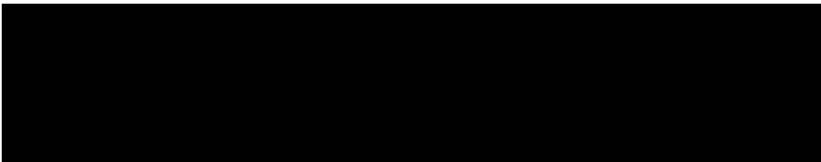
Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements) was denied by the director in New York City. The decision is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant, a native of Guatemala who claims to have lived in the United States since June 1981, submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet on January 5, 2006. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status and was continuously physically present in the United States for the duration of the requisite periods.

On appeal counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of her application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement during the requisite period.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

The AAO notes that although the applicant claims that she entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status through the requisite period, other documentation in the record indicates otherwise. At her interview on April 5, 2006, the applicant stated that she entered the United States in June 1981, and traveled outside the United States twice during the 1980s – from December 1983 to January 1984 and in May 1987. The record however, reflects that on the Form I-687 the applicant filed in 2006, the

applicant indicated in response to question #32 – absences from the United States since entry – “not applicable.” A copy of the applicant’s expired passport in the file shows that the applicant was issued passport [REDACTED] in Guatemala on December 6, 1983, a visa issued by the Consulate General of Mexico in Guatemala on January 23, 1984, and an exit stamp from Guatemala on January 24, 1984. The director notified the applicant of the inconsistencies in the record regarding her continuous residence in the United States and offered her the opportunity to submit rebuttal evidence. In response, the applicant submitted a revised page 4, of the Form I-687, indicating absences from the United States during the 1980s – from December 1983 to January 1984 and from May 1987 to June 1987. The applicant did not indicate the specific dates of her trips in 1983 and 1987. The passport shows an entry stamp into Guatemala on May 10, 1987, but did not show an exit stamp from Guatemala in 1987 to correspond with the applicant’s alleged return to the United States in June 1987.

The applicant has provided contradictory statements and information regarding her continuous residence in the United States during the requisite periods. The contradictory information casts considerable doubt on the veracity of the applicant’s claim that she entered the United States before January 1, 1982 and resided continuously in the country through the requisite periods.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant’s evidence also reflects on the reliability of other evidence in the record. *See id.*

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period legalization. For someone claiming to have lived in the United States since June 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies and contradictions in the record. Therefore, the reliability of the remaining evidence – consisting of a series of letters and affidavits – from individuals who claim to have resided with or otherwise known the applicant in the United States during the 1980s, is suspect and not credible.

The letter from [REDACTED], pastor at St. Aloysius Roman Catholic Church in Great Neck, New York, dated November 16, 2005, stating that the applicant was a registered member of the church since 1981, does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the

membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letter from [REDACTED] stated that the applicant was a registered member of the church since 1981, but did not specify the specific period of membership, did not state where the applicant lived at any point in time between 1981 and 1988, did not indicate how and when he met the applicant, and did not state whether the information about the applicant's membership was based on his personal knowledge, the church's records, or hearsay. [REDACTED] stated that the applicant was a registered member but did not indicate the source of his information about the applicant's membership. Since the letter did not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letter has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period for legalization.

As for the affidavits in the record, from individuals who claim to have resided with, or otherwise known the applicant during the 1980s, they have minimalist formats with very little input by the authors. Considering the length of time they claim to have known the applicant – in most cases since 1981 – the affiants provided very few details about the applicant's life in the United States, and the nature and extent of their interactions with her during the 1980s. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the affidavits have limited probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date of filing the application.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.